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Attorneys for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JADE WILCOX, on behalf of herself, }
and all others similarly situated, }

Plaintiff,

No. 2:17-CV-275-RMP

V.

SWAPP LAW PLLC, DBA CRAIG
SWAPP AND ASSOCIATES; and
JAMES CRAIG SWAPP, individual

Defendants.

**DEFENDANTS' SECOND
AMENDED ANSWER AND
AFFIRMATIVE DEFENSES TO
COMPLAINT**

JURY DEMAND

I. ANSWER

COME NOW Defendants Swapp Law, PLLC and James Craig Swapp, by and through their counsel of record, Barbara J. Duffy, Ryan P. McBride and Kristin Beneski of Lane Powell PC, and answer Plaintiff's Complaint with the following admissions, denials, and affirmative defenses:

1.1 Paragraph 1.1 of the Complaint states a legal conclusion and/or cause of action to which no answer is required. To the extent the allegations in Paragraph 1.1 may be construed as statements of fact, Defendants deny them.

DEFENDANTS' SECOND AMENDED ANSWER
TO COMPLAINT - 1
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1 1.2 Paragraph 1.2 of the Complaint states a legal conclusion to which
 2 no answer is required. To the extent the allegations in Paragraph 1.2 may be
 3 construed as statements of fact, Defendants deny them.

4 1.3 Paragraph 1.3 of the Complaint states legal conclusions to which no
 5 answer is required. To the extent that the allegations in Paragraph 1.3 may be
 6 construed as statements of fact, Defendants answer as follows: Defendants admit
 7 that Swapp Law, PLLC lawfully purchased collision reports from the
 8 Washington State Patrol created by law enforcement agencies following motor
 9 vehicle accidents, and that Swapp Law, PLLC mailed a letter including a copy of
 10 a collision report involving Plaintiff to Plaintiff. Defendants deny all other
 11 allegations stated in Paragraph 1.3.

12 1.4 Paragraph 1.4 of the Complaint states a legal conclusion to which
 13 no answer is required. To the extent that the allegations in Paragraph 1.4 may be
 14 construed as statements of fact, Defendants answer as follows: Defendants admit
 15 that the Washington State Patrol did not require or request Swapp Law, PLLC,
 16 to obtain written consent from drivers in connection with the purchase of collision
 17 reports. Defendants deny all other allegations stated in Paragraph 1.4.

18 1.5 Paragraph 1.5 of the Complaint states a legal conclusion to which
 19 no answer is required and that the court's June 9, 2017 order speaks for itself. To
 20 the extent the allegations in Paragraph 1.5 may be construed as statements of fact,
 21 Defendants deny them.

22 1.6 Paragraph 1.6 of the Complaint states a legal conclusion and/or
 23 cause of action to which no answer is required. To the extent the allegations in
 24 Paragraph 1.6 may be construed as statements of fact, Defendants deny them.

25 2.1 Defendants are without sufficient knowledge or information to form
 26 a belief as the truth of the allegations in Paragraph 2.1 and, therefore, deny them.

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1 2.2 Defendants deny the allegation regarding Swapp Law, PLLC's
 2 Spokane address and admit the other allegations stated in Paragraph 2.2.

3 2.3 Defendants admit that defendant Craig Swapp is a lawyer licensed
 4 to practice in the State of Washington. Defendants further admit that Craig
 5 Swapp and Swapp Law, PLLC have advertised their services in Washington in
 6 many different ways, not exclusively as identified in Paragraph 2.3. Except as
 7 admitted herein Defendants deny all remaining allocations stated in Paragraph
 8 2.3.

9 3.1 Defendants admit the allegations stated in Paragraph 3.1.

10 3.2 Defendants admit this Court has jurisdiction over this matter.
 11 Defendants deny all remaining allegations stated in Paragraph 3.2.

12 3.3 Defendants admit that this Court has personal jurisdiction over Mr.
 13 Swapp. Defendants deny all other allegations stated in Paragraph 3.3.

14 3.4 Defendants admit the allegations stated in Paragraph 3.4.

15 4.1 Paragraph 4.1 of the Complaint states a legal conclusion to which
 16 no answer is required. To the extent the allegations in Paragraph 4.1 may be
 17 construed as statements of fact, Defendants deny them.

18 4.2 Defendants are without sufficient knowledge or information to form
 19 a belief as the truth of the allegations in Paragraph 4.2, and therefore deny them.

20 4.3 Defendants are without sufficient knowledge or information to form
 21 a belief as the truth of the allegations in Paragraph 4.3, and therefore deny them.

22 4.4 Paragraph 4.4 of the Complaint states a legal conclusion to which
 23 no answer is required. To the extent the allegations in Paragraph 4.4 may be
 24 construed as statements of fact, Defendants deny them.

25 4.5 Paragraph 4.5 of the Complaint states a legal conclusion to which
 26 no answer is required.

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1 4.6 Paragraph 4.6 of the Complaint states a legal conclusion to which
2 no answer is required.

3 4.7 Paragraph 4.7 of the Complaint states a legal conclusion to which
4 no answer is required. To the extent the allegations in Paragraph 4.7 may be
5 construed as statements of fact, Defendants deny them.

6 4.8 Paragraph 4.8 of the Complaint states a legal conclusion to which
7 no answer is required. To the extent the allegations in Paragraph 4.8 may be
8 construed as statements of fact, Defendants deny them.

9 4.9 Paragraph 4.9 of the Complaint states a legal conclusion to which
10 no answer is required and that the court's June 9, 2017 order speaks for itself. To
11 the extent the allegations in Paragraph 4.9 may be construed as statements of fact,
12 Defendants deny them.

13 4.10 Paragraph 4.10 of the Complaint states a legal conclusion to which
14 no answer is required and that the court's June 9, 2017 order speaks for itself. To
15 the extent the allegations in Paragraph 4.10 may be construed as statements of
16 fact, Defendants deny them.

17 4.11 Paragraph 4.11 of the Complaint states a legal conclusion to which
18 no answer is required. To the extent the allegations in Paragraph 4.11 may be
19 construed as statements of fact, Defendants are without sufficient knowledge or
20 information to form a belief as to the truth of the allegations in Paragraph 4.11
21 and, therefore, deny them.

22 4.12 Paragraph 4.12 of the Complaint states a legal conclusion to which
23 no answer is required. To the extent the allegations in Paragraph 4.12 may be
24 construed as statements of fact, Defendants answer as follows: Defendants admit
25 that Swapp Law, PLLC lawfully purchased collision reports from the
26 Washington State Patrol and that certain information was redacted from those

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1 reports. Defendants are without sufficient knowledge or information to form a
2 belief as to the truth of other allegations in Paragraph 4.12 and, therefore, deny
3 them.

4 4.13 Paragraph 4.13 of the Complaint states a legal conclusion to which
5 no answer is required and that the court's June 9, 2017 order speaks for itself. To
6 the extent the allegations in Paragraph 4.13 may be construed as statements of
7 fact, Defendants deny them.

8 4.14 Defendants admit the allegations stated in Paragraph 4.14.

9 4.15 Defendants deny the allegations stated in Paragraph 4.15.

10 4.16 Defendants are without sufficient knowledge or information to form
11 a belief as to the truth of the allegations in Paragraph 4.16 and, therefore, deny
12 them.

13 4.17 Defendants deny the allegations stated in Paragraph 4.17.

14 4.18 Defendants state that the content of the July 21, 2016 *Inlander*
15 article speaks for itself. To the extent that the allegations in Paragraph 4.18 may
16 be construed as statements of fact, Defendants deny them.

17 4.19 Defendants deny the allegations stated in Paragraph 4.19.

18 4.20 Defendants admit that one of Plaintiff's counsel filed a bar grievance
19 against Mr. Swapp, and that during those proceedings one of Plaintiff's counsel
20 accused Swapp Law, PLLC of violating the DPPA. Defendants deny all other
21 allegations stated in Paragraph 4.20.

22 4.21 Defendants state the contents of the April 28, 2015 letter speaks for
23 itself. To the extent that the allegations in Paragraph 4.21 may be construed as
24 statements of fact, Defendants deny them.

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DEFENDANTS' SECOND AMENDED ANSWER
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1 4.22 Defendants state the contents of the June 5, 2015 letter speaks for
2 itself. To the extent that the allegations in Paragraph 4.22 may be construed as
3 statements of fact, Defendants deny them.

4 4.23 Defendants state the contents of the May 27, 2016 letter speaks for
5 itself. To the extent that the allegations in Paragraph 4.23 may be construed as
6 statements of fact, Defendants deny them.

7 4.24 Defendants are without sufficient knowledge or information to form
8 a belief as to the truth of the allegations in Paragraph 4.24 and, therefore, deny
9 them.

10 4.25 Defendants admit the existence of a collision report labeled
11 E448140 relating to Plaintiff, which speaks for itself. Defendants are without
12 sufficient knowledge or information to form a belief as to the truth of other
13 allegations in Paragraph 4.25 and, therefore, deny them.

14 4.26 Defendants admit that Swapp Law, PLLC lawfully purchased
15 collision report E448140 from the Washington State Patrol. Defendants deny all
16 other allegations stated in Paragraph 4.26.

17 4.27 Defendants admit the existence of a collision report labeled
18 E562485 relating to Plaintiff, which speaks for itself. Defendants are without
19 sufficient knowledge or information to form a belief as to the truth of other
20 allegations in Paragraph 4.27 and, therefore, deny them.

21 4.28 Defendants admit that Swapp Law, PLLC lawfully purchased
22 collision report E562485 from the Washington State Patrol. Defendants deny all
23 other allegations stated in Paragraph 4.28.

24 4.29 Defendants admit that Swapp Law, PLLC sent a letter to Plaintiff
25 dated July 14, 2016, and that contents of the letter speaks for itself. To the extent
26

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1 that the allegations in Paragraph 4.29 may be construed as statements of fact,
2 Defendants deny them.

3 4.30 Defendants deny the allegations stated in Paragraph 4.30.

4 4.31 Defendants admit that the majority of the attorneys at Swapp Law,
5 PLLC practice in the area of automobile accidents, including the attorneys
6 admitted in Washington. Defendants deny all other allegations stated in
7 Paragraph 4.31.

8 4.32 Defendants state that the content of the July 21, 2016 *Inlander*
9 article speaks for itself. Defendants deny all other allegations stated in Paragraph
10 4.32.

11 5.1 Paragraph 5.1 of the Complaint states a legal conclusion and/or
12 cause of action to which no answer is required. To the extent the allegations in
13 Paragraph 5.1 may be construed as statements of fact, Defendants deny them.

14 5.2 Paragraph 5.2 of the Complaint states a legal conclusion to which
15 no answer is required. To the extent the allegations in Paragraph 5.2 may be
16 construed as statements of fact, Defendants answer as follows: Defendants deny
17 that collision reports lawfully purchased from the Washington State Patrol
18 contained personal information. Defendants are without sufficient knowledge or
19 information to form a belief as to the truth of other allegations in Paragraph 5.2
20 and, therefore, deny them.

21 5.3 Paragraph 5.3 of the Complaint states a legal conclusion to which
22 no answer is required. To the extent the allegations in Paragraph 5.3 may be
23 construed as statements of fact, Defendants deny them.

24 5.4 Paragraph 5.4 of the Complaint states a legal conclusion to which
25 no answer is required. To the extent the allegations in Paragraph 5.4 may be
26 construed as statements of fact, Defendants deny them.

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1 5.5 Paragraph 5.5 of the Complaint states a legal conclusion to which
2 no answer is required. To the extent the allegations in Paragraph 5.5 may be
3 construed as statements of fact, Defendants are without sufficient knowledge or
4 information to form a belief as to the truth of other allegations and, therefore,
5 deny them.

6 5.6 Paragraph 5.6 of the Complaint states a legal conclusion to which
7 no answer is required. To the extent the allegations in Paragraph 5.6 may be
8 construed as statements of fact, Defendants deny them.

9 5.7 Paragraph 5.7 of the Complaint states a legal conclusion to which
10 no answer is required. To the extent the allegations in Paragraph 5.7 may be
11 construed as statements of fact, Defendants are without sufficient knowledge or
12 information to form a belief as to the truth of the allegations and, therefore, deny
13 them.

14 5.8 Paragraph 5.8 of the Complaint states a legal conclusion to which
15 no answer is required. To the extent the allegations in Paragraph 5.8 may be
16 construed as statements of fact, Defendants deny them.

17 5.9 Paragraph 5.9 of the Complaint states a legal conclusion to which
18 no answer is required. To the extent the allegations in Paragraph 5.9 may be
19 construed as statements of fact, Defendants deny them.

20 5.10 Paragraph 5.10 of the Complaint states a legal conclusion to which
21 no answer is required. To the extent the allegations in Paragraph 5.10 may be
22 construed as statements of fact, Defendants deny them.

23 5.11 Defendants are without sufficient knowledge or information to form
24 a belief as to the truth of the allegations in Paragraph 5.11 and, therefore, deny
25 them.

26

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1 5.12 Paragraph 5.12 of the Complaint states a legal conclusion to which
2 no answer is required. To the extent that the allegations in Paragraph 5.12 may
3 be construed as statements of fact, Defendants deny them.

4 5.13 Paragraph 5.13 of the Complaint states a legal conclusion to which
5 no answer is required. To the extent that the allegations in Paragraph 5.13 may
6 be construed as statements of fact, Defendants deny them.

7 6.1 Answering Paragraph 6.1 of the Complaint, Defendants restate their
8 denials and admissions in the preceding paragraphs.

9 6.2 Paragraph 6.2 of the Complaint states a legal conclusion to which
10 no answer is required. To the extent that the allegations in Paragraph 6.2 may be
11 construed as statements of fact, Defendants deny them.

12 6.3 Paragraph 6.3 of the Complaint states a legal conclusion to which
13 no answer is required. To the extent that the allegations in Paragraph 6.3 may be
14 construed as statements of fact, Defendants deny them.

15 6.4 Paragraph 6.4 of the Complaint states a legal conclusion to which
16 no answer is required. To the extent that the allegations in Paragraph 6.4 may be
17 construed as statements of fact, Defendants deny them.

18 6.5 Paragraph 6.5 of the Complaint states a legal conclusion to which
19 no answer is required. To the extent that the allegations in Paragraph 6.5 may be
20 construed as statements of fact, Defendants deny them.

21 6.6 Paragraph 6.6 of the Complaint states a legal conclusion to which
22 no answer is required. To the extent that the allegations in Paragraph 6.6 may be
23 construed as statements of fact, Defendants answer as follows: Defendants admit
24 that Swapp Law, PLLC lawfully purchased collision reports from the
25 Washington State Patrol, including reports involving Plaintiff. Defendants are
26 without sufficient knowledge or information to form a belief as to the truth of the

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1 allegation regarding the number of collision reports purchased and, therefore,
 2 deny it. Defendants deny all other allegations stated in Paragraph 6.6.

3 6.7 Paragraph 6.7 of the Complaint states a legal conclusion to which
 4 no answer is required. To the extent that the allegations in Paragraph 6.7 may be
 5 construed as statements of fact, Defendants deny them.

6 6.8 Paragraph 6.8 of the Complaint states a legal conclusion to which
 7 no answer is required. To the extent that the allegations in Paragraph 6.8 may be
 8 construed as statements of fact, Defendants deny them.

9 6.9 Paragraph 6.9 of the Complaint states a legal conclusion to which
 10 no answer is required. To the extent that the allegations in Paragraph 6.9 may be
 11 construed as statements of fact, Defendants deny them.

12 6.10 Defendants deny the allegations stated in Paragraph 6.10.

13 6.11 Paragraph 6.11 of the Complaint states a legal conclusion to which
 14 no answer is required. To the extent that the allegations in Paragraph 6.11 may
 15 be construed as statements of fact, Defendants deny them.

16 A - I Answering Paragraphs A-I in the Prayer for Relief, Defendants
 17 deny that Plaintiff or any member of the putative class is entitled to any of the
 18 relief set forth as requested in the complaint or otherwise in this action.

19 **II. GENERAL DENIALS AND AFFIRMATIVE DEFENSES**

20 Defendants hereby allege the following separate and distinct defenses,
 21 general denials and affirmative defenses without conceding that Defendants
 22 necessarily bear the burden of proof or persuasion:

23 1. The Complaint, and each claim therein, fails to set forth facts
 24 sufficient to state a claim against Defendants.

25 2. Plaintiff and members of the putative class have not suffered a
 26 concrete injury and, therefore, lack standing to bring their claims.

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1 3. The Complaint and each claim set forth therein is barred because
 2 Defendants did not act “knowingly” within the meaning of the Driver’s Privacy
 3 Protection Act. *See* 18 U.S.C. § 2724(a).

4 4. The collision reports relating to Plaintiff and members of the
 5 putative class are not subject to 18 U.S.C. § 2721, *et seq.* because collision reports
 6 purchased from the Washington State Patrol (1) are not “motor vehicle records,”
 7 as defined by 28 U.S.C. § 2725(1), (2) do not contain “personal information,” as
 8 defined by 28 U.S.C. § 2725(3), and/or (3) were not disclosed by or obtained
 9 from “[a] State department of motor vehicles,” 28 U.S.C. § 2721(a).

10 5. Defendants’ alleged acquisition and/or use of personal information
 11 from a motor vehicle record was permissible, in whole or in part, under 18 U.S.C.
 12 § 2721(b)(4) to the extent Defendants acquired or used collision reports
 13 containing putative class members’ personal information on behalf of current or
 14 former clients in connection with actual or anticipated litigation, and/or under 18
 15 U.S.C. § 2721(b)(14) to the extent Defendants acquired or used collision reports
 16 containing information that the Washington State Patrol was authorized by law
 17 to publicly disclose.

18 6. Any actions Defendants took in relation to this lawsuit, they took in
 19 reasonable reliance on actual or perceived approval by the Washington State
 20 Patrol, a state agency in a better position than Defendants to understand the nature
 21 of the collision reports it sold.

22 7. Defendant Craig Swapp is not a proper defendant in this action and
 23 cannot be personally liable for the alleged conduct of others.

24 8. Plaintiff’s claims and the claims of members of the putative class
 25 are barred in whole or in part by the doctrine of laches because Plaintiff and
 26 members of the putative class delayed asserting their rights, and that such delay

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1 prejudiced Defendants. Prejudice may include, but is not limited to, the
 2 dissipation of evidence relating to Plaintiff's claims and the claims of members
 3 of the putative class and Defendants' defenses thereto.

4 9. The doctrines of waiver and estoppel may bar the claims of some of
 5 the putative class to the extent any such member consented to or accepted the
 6 benefits of Defendants' alleged acquisition and/or use of personal information
 7 from a motor vehicle records including, but not limited to, instances where any
 8 such member retained or sought legal advice from Defendants.

9 10. To the extent Plaintiff claims to have suffered or sustained any
 10 actual loss, injury, damage or detriment, Plaintiff's claims are barred, in whole
 11 or in part, by her failure to mitigate her alleged damages, if any.

12 11. To the extent Plaintiff claims to have suffered or sustained any
 13 actual loss, injury, damage or detriment, the same was directly and proximately
 14 caused and contributed to by the conduct, acts, omissions, and/or activities of
 15 Plaintiff, the Washington State Patrol or other third-parties, and not by
 16 Defendants, and that such conduct, acts, omissions, and/or activities constitute
 17 the intervening and superseding cause of her alleged damages, if any.

18 12. The "liquidated damages" provision in 18 U.S.C. § 2724(b)(1)
 19 provides for an excessive fine or award of damages unrelated to the actual
 20 damages of Plaintiff or any member of the putative class and is thus in violation
 21 of the Fifth and Eighth Amendments to the United States Constitution.

22 13. Plaintiff's claims are not typical of the claims of the putative class,
 23 and any common questions of law or fact do not predominate over questions
 24 affecting only individual members of the putative class.

25 14. Plaintiff cannot meet the prerequisites for a class action under Rule
 26 23.

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1 To the extent not set forth herein, Defendants reserve the right to assert
2 additional defenses that become available or apparent during discovery and to
3 amend its Answer accordingly.

4 **III. DEFENDANTS' REQUESTS FOR RELIEF**

5 Defendants respectfully request:

- 6 1. That Plaintiff take nothing by way of the Complaint;
7 2. That judgment be entered in favor of Defendants and against
8 Plaintiff; and
9 3. That Defendants be granted such other relief as the Court deems just
10 and proper.

11 **JURY DEMAND**

12 Pursuant to Fed. R. Civ. P. 38(b) and LR 38.1, Defendants Swapp Law,
13 PLLC and James Craig Swapp, by and through their counsel of record, requests
14 and demands a trial by a jury of twelve (12) on all issues so triable in the above-
15 captioned matter.

16 DATED: May 9, 2018

17 LANE POWELL PC

18
19
20 By s/Barbara J. Duffy
21 Barbara J. Duffy, WSBA No. 18885
22 duffyb@lanepowell.com
23 Ryan P. McBride, WSBA No. 33280
24 mcbrider@lanepowell.com
25 Kristin Beneski, WSBA No. 45478
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CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.

Executed on the 9th day of May, 2018, at Seattle, Washington.

s/Kristin Beneski
Signature of Attorney
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**DEFENDANTS' SECOND AMENDED ANSWER
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